




# LOCAL HOSPITAL TOXICOLOGY ANALYSIS

SUBMITTED TO THE NORTH CAROLINA GENERAL ASSEMBLY  
JUSTICE & PUBLIC SAFETY OVERSIGHT COMMITTEE  
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NORTH CAROLINA CONFERENCE OF DISTRICT ATTORNEYS  
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In the Appropriations Act of 2013, the General Assembly appropriated \$500,000 to the Judicial Department for the 2013-2014 fiscal year to be allocated to the Conference of District Attorneys. These funds were appropriated to provide district attorneys across the State with the resources **“to obtain toxicology analysis from local hospitals on persons charged with driving while impaired whose conduct did not result in serious death to others.”**

For several years, the State Crime Lab has experienced an increase in their pending caseload. Exacerbating this increase have been a factors:

- The U.S. Supreme Court decision, *Melendez Diaz*, greatly increased the obligation on lab analysts' time in courtrooms and travel time to courtrooms across our state.
- Concerns about lab quality resulted in increased certification requirements which took time and manpower away from lab analysis.
- The increased certification requirements increased qualifications for lab analysts which created competition from county / city labs and private labs for these highly certified lab analysts.
- Consequently, the Lab now faces a higher turnover rate of analysts.

All of these factors contributed to significant increases in turnaround time for lab results and consequently increasing case ages in the courts. In the past five years, Superior Court Felony Case Age has increased 30% and Misdemeanor Case Age has increased 40%. Many cases have been summarily dismissed by judges who determined the wait time was simply too long to meet the requirements of justice.

The General Assembly's response to appropriate resources for blood alcohol analysis in DWI cases on a local level addressed two issues. Cases would be analyzed and prepared for court in a timely manner and analysts would be more readily available to the court for testimony. The advantage to the State Crime Lab would be to alleviate the number of cases from coming into the State Crime Lab and would free up lab analysts in the lab from travelling as often.

## Program Preparation

The Conference of District Attorneys worked with the Administrative Office of the Courts (AOC) and the Conference Executive Committee to develop a contract, set up expectations for the hospitals, local law enforcement and the district attorneys to ensure timely analysis, protection of chain of custody and expert witness scheduling.

AOC finalized contractual requirements in October, 2013 which allowed District Attorneys to begin negotiations with local hospitals to conduct the blood alcohol toxicology testing. The Medicaid Rate of \$59 per test served as a guide. Payment for expert witness testimony of lab analysts to be paid to the hospital was set according to the AOC Expert Compensation Rate Schedule.

## Program Participation:

District	County	Hospital	Contract Date	Rate
25	Catawba	Catawba Valley Medical Center	11/4/13	\$50.00
27A	Gastonia	CaroMont Regional Medical Center	12/11/13	\$60.00
29B	Henderson	Fletcher Hospital Inc./Park Ridge Health	4/1/14	\$65.00
19B	Randolph	Randolph Hospital	4/3/14	\$75.00
3A	Pitt	Pitt County Memorial Hospital / Vidant Medical Center		\$234.00
29B	McDowell	McDowell Hospital	8/20/14	\$75.00
30	Haywood	Duke LifePoint	PENDING	

During this process many other districts reached out to local hospitals in attempts to secure a contract. In all of the major metropolitan areas and many of the smaller districts, hospitals were not interested in participating. Some of the District Attorneys reported that the hospitals were under the erroneous impression that they would have to attain the same ISO certification as the State Crime Lab or that they would need additional specialized equipment. The only legal requirement for a hospital to participate in the blood alcohol toxicology program is that they have a lab that is certified by the North Carolina Department of Health and Human Services, which is a standard requirement for a hospital laboratory. Additionally, the blood alcohol analysis is a standard procedure in these labs and additional equipment is not necessary.

## Expenditures

At the time of this report, three of the districts are actively processing blood alcohol cases. Expenditures for testing thus far are as follows:

District / County	Hospital		# of Tests	Amount Expended
19B / Randolph	Randolph Hospital		18	\$ 1,350
25 / Catawba	Catawba Valley Medical Center		81	\$ 4,050
27A / Gaston	CaroMont Regional Medical Center		122	\$ 7,320
<b>Total Expenditures</b>			<b>221</b>	<b>\$ 12,720</b>

For the districts who have implemented these contracts and are active, turnaround time for lab results range from one week to one month; far less than the 2-year turnaround at the State Crime Lab. Following are reports and news articles from the districts who have successfully implemented this program.

## District 25

On September 9, 2014 in Hickory District Court we had our first trial involving blood testing that was completed by Catawba Valley Medical Center. Defendant David Yost pled not guilty to a DWI charge where blood testing had been carried out at the Catawba Valley Medical Center Lab pursuant to our agreement with them. Mr. Yost was represented by defense attorney Mathew Poteet. The ADA was Pat Finn. The charging officer was Sgt. Hardin of the Long View Police Department.

The lab technician who analyzed the blood was Mr. Ricky Bresch, the lab supervisor. He had previously never testified to this type of test in court prior to yesterday. Mr. Finn did a great job with the case and was able to get Mr. Bresch qualified as an expert in chemistry testing, which will be helpful in future cases. The lab results were a .225. Mr. Poteet tried several methods to keep the results from being entered as evidence. He even tried to get the results thrown out saying that the Paramedic that drew the blood could have wiped the defendant's arm with an alcohol pad before drawing the blood. Mr. Bresch was able to explain the science behind how the testing recognizes the difference in the two types of alcohol and even if that did happen he was able to render an opinion as to the effect it would have had in this particular case. Mr. Bresch was able to testify to both his credentials as well as those of the hospital lab. The blood result was admitted into evidence and Mr. Yost was convicted.

The case was very important for many reasons. Mr. Yost had two prior DWI convictions; one in April 2009 and one in June 2005. There were four defense attorneys and a private investigator who works for another defense attorney present watching the case. There were two other lab technicians from the hospital watching the case for training purposes. This case has now provided our office with a precedent for future blood test cases from the local lab.

After the trial a defense attorney made the statement "what happened to the good old days when on a blood test trial the lab technician that did the testing was no longer around and could not be found."

## District 27A

### **D.A.: CaroMont Makes it Easier to Fight DWIs in Court - *Gaston Gazette* – September 11, 2014**

Fewer drunken drivers could be on the roads of Gaston County thanks to a partnership between prosecutors and the local hospital. Changes in blood testing are speeding up the trial process, and that leads to more convictions, according to Gaston County District Attorney Locke Bell. "I truly believe that the hospital is going to save the lives of innocent people by getting drunk drivers off the road," Bell said.

**Telling tests** - The majority of suspected drunken drivers are given breath tests to determine their level of intoxication, but drivers can refuse that roadside assessment. When they do, a nurse at the Gaston County Jail takes blood from the suspect. In the past, those samples have been mailed to a state lab in Raleigh for testing. The N.C. State Bureau of Investigation lab tests potential evidence for courts throughout the state. The heavy workload creates a backlog. A blood test for a drunken driver typically takes nearly two years to be analyzed and returned to Gaston County prosecutors, according to Bell. Now that technicians at the local hospital are conducting the blood tests, the process takes only a month, Bell said.

**New process** Gaston became a trendsetter in blood testing for DWI cases in 2013 when legislators signed off on a bill to allow local samples to be tested at CaroMont Regional Medical Center. Bell said he met with CaroMont administrators and then legislators to get the bill passed. CaroMont took over Gaston's testing in January and volunteered to take backlogged samples from the state lab. CaroMont technicians have since processed 180 blood samples. Two lab workers at the hospital took additional training and now test the potential evidence. We're happy to do that. There's some satisfaction to know that not only are we improving the health of our community, but we're helping keep drunk drivers off the road," said David Mills, administrative director of the hospital laboratory.

**Drop in the bucket** - The hospital didn't need to hire new employees to take on the task. CaroMont tests more than 3 million samples in its laboratory each year so adding the District Attorney's workload was a drop in the bucket, according to Mills. Bell said the hospital's willingness to take on the testing means a lot in the courtroom. Older DWI cases can be dropped because officers and potential witnesses move out of the area by the time the cases go to trial, Bell said. Scheduling lab technicians to come from Raleigh was also challenging. Now CaroMont can send someone a few miles down the road rather than a public employee traveling across the state.

**Who pays the bill?** - Legislators set aside \$500,000 for the new testing process when the bill was approved. That money is to be shared by counties who choose to participate. Gaston was the first, but prosecutors in Hickory and Asheboro have since started similar testing structures, Bell said. CaroMont charges \$60 per test, the same rate Medicaid would pay, according to Bell. The hospital does not benefit financially by providing the service, according to CaroMont officials. "One of our goals is to reduce trauma and certainly DWI is a big contributor to vehicle accidents," said Mills.

**First of many** - CaroMont sent a lab technician to testify about a blood sample for the first time in July. The blood analysis and testimony led to the conviction of Ronnie Lee Welch, a habitual drunken driver who has 10 convictions for the crime. Welch's drinking and driving convictions date back to 1990, according to Bell, and typically took more than a year to make it before a judge. His most recent case took five months. Assistant District Attorney Donald Rice prosecuted the case and said the conviction was a win for everyone on the roads. "Every day Mr. Welch is confined in prison is a victory for the state of North Carolina," he said. "Every day Mr. Welch is confined in prison, innocent lives are potentially saved." Welch is expected to be released from prison in June 2015, after serving a sentence of approximately 28 months.

#### **Blood trail under the old system**

Blood drawn at Gaston County Jail

Mailed 185 miles to SBI lab in Raleigh

Tested for alcohol

Results mailed 185 miles back to Gaston County Courthouse

**Estimated time:** 22 months

#### **Blood trail under the new system**

Blood drawn at Gaston County Jail

Driven 4.5 miles to CaroMont Regional Medical Center by investigator

Tested for alcohol

Results sent 4.5 miles back to Gaston County Courthouse

**Estimated time:** 1 month

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The Memo below is from an Assistant District Attorney to the Elected District Attorney Locke Bell. Mr. Welch was convicted on Aug. 22, 2014. They used the local hospital with the lab analyst being qualified as an expert. The defendant was convicted as a level 1 and got 24 months.

“The defendant Ronnie Lee Welch is currently charged with DWI. The date of offense was 2/23/2014, and his trial is set for 7/25/2014. Upon examination of his North Carolina Driving history, it has become apparent that the defendant has an extensive history of driving while impaired. The defendant has ten prior convictions for impaired driving, including three Habitual Impaired Driving convictions, and yet based on the current statute, he does not qualify for aggravated level one DWI status or Habitual Impaired Driving status. What follows is a summary of his DWI history.

<u>Date of Offense</u>	<u>Date of Conviction</u>
2/11/1990	6/10/1992
2/14/1992	6/10/1992
5/2/1997	12/11/1998
5/6/1997	12/11/1998
6/23/1997	12/11/1998
8/17/1999	6/6/2000 (Habitual DWI)
4/1/2000	9/8/2000
3/14/2003	4/1/2003
10/2/2003	4/29/2004 (Habitual DWI)
5/27/2007	4/7/2008 (Habitual DWI)

Mr. Welch’s driving privileges have been permanently revoked since his convictions on 12/11/1998, but he has continued to drive and place our community at risk. As you can see from his driving history, Mr. Welch will accumulate several DWIs in close succession, plead guilty to them all on one date, serve an active sentence, and repeat the process. The only reason Mr. Welch has not accumulated further DWI convictions since 2008 is because he has been in the DAC. I am convinced the only way to stop Mr. Welch from committing further impaired driving offenses is to keep him confined. Everyday Mr. Welch is confined in prison is a victory for the State of North Carolina. Everyday Mr. Welch is confined in prison, innocent lives are potentially saved. Once a person has been convicted of Habitual DWI, every

subsequent DWI should also be Habitual. Please take into account the Ronnie Lee Welches of our state when you are revising the Habitual Impaired Driving statute.

Thank you,  
Donald T. Rice  
Assistant District Attorney  
District 27A"

#### **District 19B**

We have not had a trial yet but we are very happy with the program. Our hospital is getting us reports within a week. Law Enforcement loves it.

#### **Conclusion**

This innovative approach has provided much needed assistance to individual prosecutorial districts, communities and indirectly, the State Crime Lab. The District Attorneys who have been successful in this endeavor had established relationships with local hospitals and were easily able to create these partnerships. By sharing information about how these partnerships and processes are implemented, other districts will follow suit. The local hospitals have been able to easily absorb the workload and have benefited their communities by proactively in saving lives and keeping our roads safer. Now that lab accreditation issues have been clarified, more hospitals may be more willing to enter into these contracts. The State Crime has received some relief because they did not have to process these cases. But more importantly, their lab analysts did not have to travel to these districts.

Local hospital labs are efficient and expedient in handling the more perfunctory forensic tests that are required for court. The labs are quicker and the analysts are more accessible. Districts are bringing these cases to conclusion on a significantly improved timeline. This saves time and money for the court system and justice is no longer being delayed or denied.